THE GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) BILL, 1999

THE MINISTER OF COMMERCE AND INDUSTRY (SHRI MURASOLI MARAN): Madam, I move:

> "That the Bill to provide for the registration and better protection of geographical indications relating to goods, be taken into consideration."

Madam, geographical indications refer to any indication which define goods as originating in the territory of a country or a region or a locality in that territory and where a given quality, reputation or other characteristics of the goods is essentially attributable to its geographical origin. Some well-known examples of geographical indications include Darjeeling Tea, Malabar Pepper, Alleppey Green Cardamom. There are also cases where association of a particular origin on account of the particular characteristics of the soil, rainfall, climate, etc. with certain goods has come about, even though such names do not themselves include reference to geographically identifiable places. An example of this would be Alphonso mangoes which are grown in the Ratnagiri region of Maharashtra. In the non-agricultural sector, Pashmina shawls from Kashmir and Kanjeevaram silks/sarees from the Kanjeevaram area of Tamil Nadu are examples.

In India, presently, there is no codified law for registration and protection of the geographical indication of goods. Some limited protection is available under the common law. There is also some protection under the Trade and Merchandise Marks Act of 1958, but there is no direct legal protection. The proposed legislation seeks to provide for registration and better protectionof geographical indication of goods in India.

It would enable Indian geographical indications to enter the world market and help exporters to encash the reputation associated with such goods. In view of the rich diversity of agricultural production and handicraft manufacturing practices and traditions in India, many of these Indian goods enjoy a historical reputation and a sizeable export market. It is, therefore, necessary to protect these names in order to ensure that genuine goods are legally protected and goods that do not originate in the country cannot be deceptively passed off as such goods. A codified law would protect consumers against deceptive trade practices. It would

6.00 p.m.

guarantee authenticity of the source of goods and ensure quality. It would also extend assured legal cover to producers of such goods.

I may mention that if a specific law is enacted in India, an effective form of ptoection for goods bearing geographical indications of Indian origin would also be available to India as a Member of the WTO and the Paris Convention. Otherwise, the Indian geographical indications do not become generic. The proposed legislation would, therefore, not only secure India's commercial and export interests and curb unfair competition, but it would also meet India's international obligations. It would firmly secure India's interests abroad if protection were to be brought under a separate comprehensive legislation. It will also establish a transparent and user-friendly administrative system through the rules to be framed under it.

I wish to tell the hon. Members that this is a legislation which has been long due, and it is a non-controversial Bill. I would urge upon their constructive co-operation while considering this Bill.

The question was proposed.

THE DEPUTY CHAIRMAN : Mr. Minister, you mentioned about Pashmina shawls. Now, all over the world, specially in the United States and other places, Nepal shawls are sold as Pashmina shawls, and people are misunderstanding whether they are originating from Kashmir or not. They don't know that they are not Kashmiri shawls.

SHRI MURASOLI MARAN : That is why, Madam, we are protecting those goods through this Bill. It is very important for our industry, business and our village handicraft.

THE DEPUTY CHAIRMAN : There are also incidents where the word 'Kashmir' is written with 'c', but pronounced as Kashmir, and these goods are sold as woollen goods as if they come from Kashmir.

SHRI MURASOLI MARAN : Madam, the formula is, first protect it domestically in our country, and then it will be protected else where.

THE DEPUTY CHAIRMAN : It is a good thing.

SHRIMATI KAMLA SINHA (Bihar): Madam, I think Pashmina shawls have been banned all over the world.

THE DEPUTY CHAIRMAN : Shahtoosh is banned. Pashmina shawl is still allowed.

Now, there is an amendment by Prof. (Shrimati) Bharati Ray for reference of the Geographical Indications of Goods (Registration and Protection) Bill, 1999 to a Select Committee of Rajya Sabha. The Member may move the amendment.

PROF. (SHRIMATI) BHARATI RAY (West Bengal) : Madam, I don't want to move it.

THE DEPUTY CHAIRMAN : You don't want to move it? Very good. Now the Motion for the consideration of the Geographical Indications of Goods (Registration and Protection) Bill, 1999 is open for discussion. Prof. (Shrimati) Bharati Ray.

PROF. (SHRIMATI) BHARATI RAY : Madam, the primary purpose of this Bill is obviously to safeguard India's biological wealth and prevent bio-piracy. India is one of the seven mega bio-diversity countries of the world with at least 45,000 known species of plants, and 81,000 known species of animals. There are numerous unknown species in unfrequented forests and mountains. That is why today we are the main target of piracy. Once they came to India in search of spices. Now the pursuit is for herbs and animals. Colonialism, Madam, has many faces. This may be one of them. Our green gold is more alluring than the Spanish silver. Our wild, and not so wild animals are more covetable than the horse flesh of the Wild West. Madam, this is why the new invasion is not of land. It is of the genetic resources that thrive in it. It is not the people, but of the knowledge system that people have developed here over many millennia. For us, Madam, this is a question of survival because a vast majority of Indian people, specially the marginal farmers and tribals depend directly for their sustenance -- food, medicine, household items and cultural sustenance -- on the diversity of plants and animal life. We must safeguard their interests. We could not safeguard Basmati which has become Texmati. The attempted patenting of *neem, haldi* and *karela* is well known. A German firm has taken six patents on compounds derived from an Indian plant, and an American firm is trying to patent 30 Indian vegetables. In my view, the most frightening example is a reported application by the Roslin Institute of Great Britain on a gene construct of an Indian cattle breed, a rare cattle breed, the Vechoorcow of Kerala. Its milk is protein rich, and it has rich fat

content, excellent for butter production. This Roslin Institute cloned Dolly the Lamb. Maybe, they will clone a Vechoor cows and call it Dolly or Barbie. If I may elaborate further, scientist Madhav Gadgil pointed out that there are some patches of forests which have been preserved since the 6th Century A.D. as reserve forests, sacred groves. They contain innumerable plants and we have to safeguard them. We must see to it that our resource base is not being sucked into the exploitative development process of the technologically developed West. The question of geographical indications came up, as the Minister has kindly explained, when an American firm, Ricetech, was granted a patent on Basmati. The CSIR could not refute it because the geographical indications of Basmati were not registered. That is why we have to take action to register our geographical indications. This is the purpose of the Bill. So far so good.

Two flaws, in this Bill, I want to point out. The first flaw is, in India, the question of geographical indications is not only a legal and scientific concern, it is a human issue also. It has social and cultural ramifications. The Bill ignores these aspects. Clause 11 says, 'Any association of persons or any organisation or authority established by or under the law..' Is that fair? What about the farmer and the tribal? Can they come forward and register their goods? Will the owners of Vechoor cow do that? Will Jadhav Das of Calcutta be able to register his Mhisti Dhoi? The implications become clear when we look at the clarification of clause 11. Generally, the apex bodies dealing with particular goods, like Coffee Board, Tea Board, Spices Board, which look after the interests of producers of such goods, would initiate applications. That is why, the Government expects only 1,200 applications. Madam, what will happen to ppor patua of Midnapur with his unique batachitra? Now you know that this folk art has become "fashionable." What will happen to the indigent women of Shantiniketan who make living by selling hand-stitched cotton? Who will protect their interests? Actually, they need protection not only in the export market, but also in the home market against these powerful multinationals. We have to make sure that when the rules become effective, their art and craft and their specific knowledge of plants and animals are not registered by profit- making associations as their own goods. The very important clause is...

THE DEPUTY CHAIRMAN: I think, what the Minister here means is that the germ plasm of indigenous plants should be protected because there have been information that the germ plasm of a wild variety of Indian rice

was stolen and taken away somewhere. A particular thing grows only in a particular geographical climate. I do not think it covers handicrafts. It only covers what grows from the ground at a particular place.

PROF. (SHRIMATI) BHARATI RAY: And animals also. So, who will register the specific knowledge about animals? For example, Vechoorcows?

THE DEPUTY CHAIRMAN: I think, the Zooological Society will do that. *(Interruptions)*

PROF. (SHRIMATI) BHARATI RAY: The Government must come forward. *(Interruptions)*

THE DEPUTY CHAIRMAN: The Minister will answer.

PROF.(SHRIMATI) BHARATI RAY: The Government must take the initiative to make an inventory and encourage people and take necessary steps for arranging their registration and patenting.

Therefore, I think, they will need a larger infrastructure than they have and they will need much more than Rs.1.24 lakh mentioned in the financial memorandum. The other thing that I want to say is that the crucial community ownership has been ignored here because the Convention on Biological Diversity 1993 recognises communities as owners. We have to address the question of geograpahical indication of goods as indicated in this Bill "owned collective by a village community' and they should be registered under what Vandana Shiva calls, "the collectively intellectual right". About the plants species in India, we have a very classical old knowledge system - the Unani medicine system and the Ayurvedic medicine system. They mention many plants and many animal parts. But they have no geographical indication. We must take care of them before we lose them. One last point for the attention of the hon. Minister is this that our Government must take steps at the international level and address these issues in international agreements for international safeguards for which our hon. Minister has the expertise to do. *(Time-bell)* I want to make just two more point. Firstly, a patent application should be screened globally for detecting bio-piracy or if any prior knowledge. Secondly, in the case of patent of life forms, an application must disclose the genetic material that forms the basis of the invention. It must give a clear undertaking that the genetic material if taken out of another country was done so by observing the laws of the country. Madam, this is a very complex subject. I do

request our hon. Minister to exercise the same expertise that he exhibited at Seattle and give very special care regard to every minor detail in this Bill regarding the Indian interests abroad and the Indian small producers' interests at home. Thank you.

THE DEPUTY CHAIRMAN: At Seattle and today, in this House also, while answering...*(Interruptions)*...

SHRI P. PRABHAKAR REDDY (Andhra Pradesh): Madam, I thank you for giving me this opportunity to speak. Madam, I rise to support this Bill. As the hon. Minister has explained, this piece of legislation is intended to primarily protect our farmers and the consumers. And not only that, it will also help in promoting the goods having Indian geographical indication in the domestic as well as the international market. As the hon. MInister said, unless we give protection to our products, there is no obligation on the part of other countries to extend protection. I will give a small example. Madam, Vietnamese pepper is being sold in the international market under the lable of Malabar pepper. Vietnamese pepper is being sold as Malabar pepper. There is nothing which we can do about it because there is no legislation in our country to protect it. The consequence is of it is that the Malabar pepper cannot be sold in the international market as Malabar pepper, but only the Vietnamese pepper will be sold as Malabar pepper. This is not an isolated case. There is another example which was frequently referred to in this House, that is, Basmati. Everybody knows that Basmati rice is grown in the foothills of the Himalayas in India and Pakistan. But it is patented in America. We are losing out because of this. And I think this is a welcome move and I congratulate the Government for bringing this legislation though they have time to do that.

THE DEPUTY CHAIRMAN: I think we have won the Basmati case. ...*(Interruptions)*... Now it is known as Taxmati or something like that. ...*(Interruptions)*... We should not even allow them to use the word 'mati' because it is an Indian word, our word. ...*(Interruptions)*...How can Americans use the word 'mati'? One day they may recognise 'Shrimati' also. ...*(Interruptions)*...

SHRI P. PRABHAKAR REDDY: They did not patent it. ...*(Interruptions)*... Madam, another thing is this. India is a vast country and we have a large agricultural diversity. As an hon. Member has rightly said, according to reports, we have about 45,000 varieties of plants and about

75,000 species of life. There is a need to identify all these animals and plants, as has been done in Australia. I think we should follow what Australia had done. We must, immediately, take up the registration of these animals and plants in our country. I would like to submit that the responsibility of the Government is not going to end by getting this legislation passed. The real work starts now. Because, many people have no knowledge on the Intellectual Property Rights. Most of the educated people, people living in urban areas and allied are unaware of the nuances of the Intellectual Property Rights. There is a need to constitute a biodiversity commission to educate people, to educate rural masses and farmers about the advantages. According to the UNDP Report, we are losing close to Rs. 5.3 billions every year because multinationals are making use of our knowledge and making money. We are being deprived of that money. Therefore, this commission should undertake educative programmes. The State Governments have also to play a vital role. In different States, there are a number of products with geographical distinction and geographical attraction. Even the State Governments must be motivated. The Government must also take up this task. Only then, can this legislation be taken to its logical end.

Before I conclude, I would like to say one or two points. The W.T.O. countries must be told that they should refuse to register or invalidate a Trade Mark which contains geographical indication of another country. This is a must. Unless we take it up - I do not know what the present position is - it is very difficult. The hon. Minister may clarify this point while giving his reply.

The other thing is, a special appellate court must be constituted to deal with the Intellectual Property Rights cases and it should be accorded a status that is equivalent to High Court.. With these words, I feel that India has much to gain by passing this legislation speedily. With these words, I support the Bill. Thank you.

SHRI VAYALAR RAVI (Kerala): Madam Deputy Chairperson, I would just like to seek clarifications from the hon. Minister on certain points. My first point is, Clause 6 says about the appointment of the Registrar. It is a good thing. Look at Clause 60. It deals with the powers of the Registrar. It says, "The Registrar shall have all the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the

attendance of witnesses, compelling the discovery and production of documents and issuing commission for the examination of witnesses..." My point is, the Registrar is the sole authority with regard to registration, cancellation and everything. If any other thing comes, another person should be there to look into those things. Is it fair? It is a good Clause. Is it proper to give authority and power to the Registrar, in whatever case it may be, of a civil court? You can clarify my point. Or, you can look into this point. Madam, is Clause 60 fair? You are giving the Registrar, who is the sole authority of this institution, the power of a civil court to deal with all subjects. That is number one. I would only like to raise two more points.

Madam, Clause 50 speaks about the cognizance of certain offences and the powers of police officer for search and seizure. It says, "No court shall take cognizance of an offence under section 42 or section 43 or section 44 except on complaint, in writing, made by the Registrar or any officer authorized by him in writing." But, there is a proviso. You made it very clear that even a court cannot take a suo motu cognizance of an offence. Sub-Clause 4 of Clause 50 says about giving authority to a police officer. He can *suo motu* initiate action. But, there is a proviso. I agree. The proviso says that he has to go to the Registrar and get a permission.

But a police officer can initiate the proceedings. He can take cognisance of an offence. When you are barring a court from taking cognisance of an offence, why are you allowing a Dy. Superintendent of Police? Madam, I am unable to give a certificate that all the police officers are honest. Of course, there are many honest officers also. The Home Minister, Shri L.K. Advani, is sitting here. He also knows how difficult a police force is. So, Why do you want to give an authority to a Dy. Superintendent of Police that he can suo motu go to the registrar and check up the records of a company which he wants to raid, to give a certificate, or refuse a certificate? You are making it very clear that even a court cannot take cognisance of an offence, but a Dy. Superintendent of Police can do it. So, I hope the hon. Minister would apply his mind and will do whatever he can do.

SHRI MURASOLI MARAN: Madam, I am grateful to the hon. Members for their contribution and valuable suggestions. This Bill has been pending for a long time. It should have been passed a long time back

because it is very important for our industries, for our trade, for our commerce, and for our handicrafts. Because of this Bill, we can now protect all our historic wealth, our historic properties, for example, Darjiling tea, Malabar pepper, green cardamom, pashmina shawls, kolhapuri chappals. We are proud of our products. *(Interruptions)*

THE DEPUTY CHAIRMAN: Shrimati Kamla Sihna has written to me that a kind of rice is sold in America, which is known as Patna rice.

SHRI MURASOLI MARAN: I will come to it, Madam. Mr. Prabhakar Reddy said, "Malabar pepper is sold as Vietnam pepper." It is being done because we have not passed a law. So, it is called 'passing off' in law, though I am not a lawyer. I say this is passing of, this is cheating with customers. But unless we have a domestic law, we cannot safeguard our interests internationally. Therefore, this law has become very essential from the point of view of safeguarding our own interests. Here, I would like to quote from a very valuable literature from the World Intellectual Property Organization (WIPO). I quote, " Such protection with what we are giving now in very many cases only be afforded where the appellation or indication is protected in the exporting country itself. Since most of the developing countries do not yet have provisions on the protection of appellations of origin and indications of sourcelike, for example, pashmina shawls, or Kerala pepper-- is in their interest to provide for and regulate such protection as soon as possible. They will thus prevent the reputation of their products from being diminished by the wrongful use of the corresponding appellations, and, at the same time, they will promote their export." So, if our Malabar pepper is sold as Vietnam pepper, it is diminishing the value of our product. It is a wrongful use of our property. That is why we have brought this Bill. It is very interesting how the Western countries are safeguarding their wines and spirits. I came across a literature; it will of interest to the hon. Members. They are safeguarding a famous wine called 'madeira'. It is supposed to be the best wine in the world. I quote from a book of WIPO, "An illustration of this fame of this wine can be traced back to the 16th century's play "Henry the Fourth", Part one", by William Shakespeare, in which one of the character says, "Jack, how agrees the devil and thee about thy soul, that thou soldest him on Good-Friday last for a cup of Madeira...."

We have heard that a man is sold for a few pieces of silver. You know Jesus Christ was done to death. Here, 'a cup of Madeira" is quoted by Shakespeare. So, it is such a valuable thing. The foreign countries are quoting from the literature and safeguarding it. Likewise, Madam, all the while we were under the impression that 'champagne' means a kind of drink. No. 'Champagne' denotes a district in France. When Spain wanted to export Spanish Champagne, they went to the court and stopped the use of Champagene. Similarly words like 'Scotch' and 'Whisky' are safeguarded in India. Madam, I just want to quote it. There was a case, for example, Mohan Meakins Breweries versus Scotch Whisky Assocation (1979) in the Delhi High Court and the court affirmed the order of the Registrar of Trade Marks by who refused to revise the words 'Highland and Highland Chief" because they indicate geographic indications. They belong to a particular country, that is, Scottland. So, Madam, that is why this law is very important, to safeguard our own interests. Now, Madam, a question was raised regarding 'Basmati'. M/s Ricetech Incorporated, Texas, obtained a patent in respect of Basmati rice from the U.S. Patent Trade Mark office. The Department of Agriculture, the ICAR and the Director of Rice Research Institute have finalised the recorded scientific data and documents, in consultation with our Attorney-General. It is expected that it would be finalised by the end of December. We are going to oppose it stoutly. Already, Madam, for your information, we have created a Basmati Development Fund in December 1995, primarily, for the purpose of protecting the name 'Basmati' in the international market. The fund was engaged a 'Trade Mark Watch Agency' which stands watch on its behalf for any new trade mark applications for Basmati or its deceptive variations in literally every part of the world. As a consequence, Madam, we have won several victories. The fund is currently involved in pursuing legal action in 18 jurisdictions in the world including Greece, U.K., South Africa, Jordan, U.A.E., Chile, Spain, Turkey, Brazil, Kuwait and Taiwan. We have achieved success in U.K., Colombia, Brazil, Spain and Taiwan. We have filed opposition in Chile, Denmark, Israel, Jordan, Turkey and South Africa. Therefore, we are not keeping quiet. We are doing our best. We have already achieved success in U.K. and other countries. So, the fight is going on. Our Department and our technical people are working on it and, very soon, we will file a suitable reply and fight the case out in the United States. Madam, Mrs. Bharati Ray has mentioned about biopiracy. Yes; Australia is getting patent for its entire flora. I am told, Madam, Iceland is trying to

obtain a patent for the genetic code of its entire population. Therefore, biopiracy should be prevented, but it should be prevented by a separate legislation. A separate legislation in this regard is under consideration. The Botanical Survey of India and the Geological survey of India are responsible for survey and inventorisation of the plant and animal species of the country. According to the information available, approximately, 70% of the geographical area of the country has been surveyed so far by these organisations. Based on the survey, over 46,000 species of plants and 81,000 species of animals have been recorded.

PROF. (SHRIMATI) BHARATI RAY: Has all the survey been done in the South Himalayan region and the Silent Forest in the South?

SHRI MURASOLI MARAN: Madam, this work is going on. Very soon we are bringing a law to take care of it. I am saying that already the job is on. It is being successfully done. It will be completed very soon. Madam, therefore, I will suggest that what we are doing now is really a historical action. I am very happy that you are all supporting the Government.

Once again, I quote from the WIPO Organisation's literature:

"Protection of industrial properties is not, of course, an end in itself: it is a means to encourage creative activity, industrialisation, investment and honest trade. And all this is designed to contribute to more safety and comfort, less poverty and more beauty in the lives of men."

Therefore, Madam, I once again stress that we need to demonstrate that we have the mindset of strength and assertive action. For these things, as we have done in our glorious past and are increasingly doing so in a number of areas today, we need to become a creative engine in global terms in more and more areas.

Thank you. I thank all the Members for their support.

THE DEPUTY CHAIRMAN: I shall now put the motion moved by Shri Murasoli Maran to vote. The question is:

> "That the Bill to provide for the registration and better protection of geographical indications relating to goods, be taken into consideration."

The motion was adopted.

THE DEPUTY CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill.

Clauses 2 to 87 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI MURASOLI MARAN: I beg to move:

"That the Bill be passed."

SHRI VAYALAR RAVI: I raised a point about police officers. I don't want the hon. Minister to amend it at the moment. I have only said that the DSPs have been given such powers. Will you please look into it? Also have a look at the powers given to civil courts. What is this? These are the only two points. I am only suggesting that the Minister may look into them at a later stage.

SHRI MURASOLI MARAN: Definitely, I will look into them, Madam.

Thank you.

THE DEPUTY CHAIRMAN: The question is:

That the Bill be passed.

The motion was adopted.

THE DEPUTY CHAIRMAN: Today, we took 45 minutes for the half-an-Hour Discussion and half-an-hour for the one-hour Bill. So, we have balanced the time.

Re. Demand for probe into clandestine delivery of Gen. Pervez Musharraf's letter to Hurriyat Leader lodged in Jodhpur Jail

THE DEPUTY CHAIRMAN: There is something. The other day, Dr. Manmohan Singh raised a concern about a letter of the Pakistani Dictator, Gen. Musharraf, which reached the Jodhpur jail. For that the Home Minister promised on the floor of the House that he would come back with the information and clarify it. So, please don't consider this to be a statement. It is not a *suo motu* statement. So, there will be no clarification on it. It is just information that he wants to share with the House.

THE MINISTER OF HOME AFFAIRS (SHRI L. K. ADVANI): Madam Deputy Chairman, the Leader of the Opposition had raised this